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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



Application No. : 10/551,443 Confirmation No. :
First Named Inventor :
Filed : September 29, 2005
FC/A.U. :
Examiner :

Docket No. : 101795.56306US
Customer No. : 23911

Title : Device and Method for Determining the Orientation
of an Eye

RENEWED PETITION UNDER 37 CFR 1.137(b)

Mail Stop PCT
Commissioner for Patents
Office of PCT Legal Administration
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

The following renewed petition is respectfully submitted in response to the
Decision on Petition dated June 8, 2006 in the above identified application.

Additional information in support of reconsideration in support of
this renewed Petition begin on page 2 of this paper.

Information supporting reconsideration of Petition for Revival under
37 CFR 1.137(b)

The Petition to revive dated September 29, 2005 was dismissed without prejudice for failure to comply with subsection (1) of 37 CFR 1.137(b) concerning a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional. Although the Decision acknowledges that the required statement has been provided, additional information explaining the delay is required. Most particularly the Decision states that it is “not necessary for an applicant to hold the entire right to an invention to file an application for it.”

It is noted, in response, that the present case is a PCT which was timely filed. It is was not possible for any inventor to file in the US because the inventors were not the Applicant of the PCT and could not be until ownership was transferred or release to inventors. As indicated in the original petition, at the time of applicant's co-invention of the subject matter reflected in the present application (when PCT was filed), several of the co-inventors (but not all of the co-inventors) were employees of Physoptics Opto-Electronic GmbH. By virtue of German employee inventor's law, Physoptics took over their right to this application worldwide. Physoptics later went into bankruptcy and their trustee refused to release their right to this application and refused to initiate the US national phase. Applicant filed a lawsuit in November of 2003 against the trustee regarding abuse of German employee inventor's law as well as German Patent Law with respect to this invention and others. An agreement was

reached releasing all rights to this and numerous other applications.. Because all rights to this application were not held by Physoptics (as indicated above there were other inventors who did not work for or were not obligated to assign to Physoptics), it was necessary to negotiate with the other owners regarding prosecution of the application which was not completed until near the end of 2004. Thus it was not possible for any inventor to enter the National Stage in the US when there was no ownership to any inventor apparent from the assignment of the original PCT application filed in 2000.

Under German law the applicant company, if it does not prosecute the application is required to sign it over to the inventors. In this case the company went into Bankruptcy and the trustees refused to release the rights to the inventors. Therefore Mr. Dickerson sued on the basis of abuse of German employee inventor's law and German Patent Law with respect to this and other applications. During the course of this lawsuit, an agreement was reached so that the rights of the company (Physoptics) were released by the trustees to the inventors, but not all the rights, because of the "other" inventors discussed above.

It is not clear that Mr. Dickerson could have filed before the expiration of the time period for entering the National Stage in the US because he had, at that time, no rights, until given by the trustees during the course of the lawsuit filed by Mr. Dickerson in November of 2003. It is not unreasonable to conclude that other rights, outside of those held originally by Physoptics, should have to be addressed by Mr. Dickerson prior to entering in the United States. Very

practical items must be considered, such as expense of filing and how that expense would be shared with respect to the "other" owners. For instance if Mr. Dickerson paid everything, there is nothing to prevent the "other" owners from using the patent without incurring any expense. These matters had to be worked out from a business point of view before proceeding to file even assuming that Mr. Dickerson had obtained a theoretical right to file an application after he settled the lawsuit, which date was already past the time period for filing in the US. However construed the delay is submitted as certainly unintentional in the required manner of 37 CFR 1.137(b) .

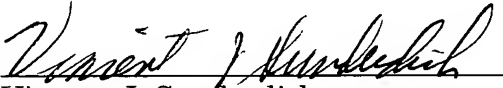
Accordingly , reconsideration and granting of the Petition to Revive under 37 CFR 1.137(b) is respectfully requested.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #101795.56948US).

Respectfully submitted,

Date: August 8, 2006



Vincent J. Sunderdick
Registration No. 29,004

CROWELL & MORING LLP
Intellectual Property Group
P.O. Box 14300
Washington, DC 20044-4300
Telephone No.: (202) 624-2500
Facsimile No.: (202) 628-8844
VJS:vjs
2822965